



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: EAC-98-157-53817

Office: Vermont Service Center

Date: JUN 15 2000

IN RE: Petitioner:
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:

Public Copy

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrence M. O'Reilly, Director
Administrative Appeals Office

JUN 15 2000 - 057208

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a religious organization. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), to serve as a head reverend. The director denied the petition determining that the petitioner had failed to establish the beneficiary's two years of continuous religious work experience.

On appeal, counsel argues that the beneficiary is eligible for the benefit sought.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2000, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2000, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The beneficiary is a fifty-three-year-old single male native and citizen of Korea. The petitioner indicated that the beneficiary

entered the United States as a visitor on June 7, 1997 and that his authorized period of admission expired on May 5, 1998. The petitioner further indicated that the beneficiary had never worked in the United States without permission.

At issue in the director's decision is whether the petitioner has established that the beneficiary had two years of continuous work experience in the proffered position.

8 C.F.R. 204.5(m) (1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on May 5, 1998. Therefore, the petitioner must establish that the beneficiary had been continuously working in the prospective occupation for at least the two years from May 5, 1996 to May 5, 1998.

In its letter submitted with the petition, the petitioner stated that the beneficiary was "the Chief Priest of Won Deung Temple in Korea from September 1988 to December 1996." The petitioner did not provide any information about the beneficiary's work experience since December 1996. On August 18, 1998, the director requested that the petitioner submit evidence of the beneficiary's work experience during the two-year period prior to filing. In response, counsel referenced the previously-submitted documents.

On appeal, counsel states that the beneficiary:

came to the United States on December 26, 1996 where he immediately began to preside over Buddhist funeral services and to work as a praying priest at Won-Gak temple in Philadelphia. He returned to Korea in May 1997 to tie up his affairs and returned one month later to Philadelphia in June, 1997 where he continued with his full time duties at Won-Gak temple.

The petitioner states that, the day after his arrival in the United States, the beneficiary "stayed in Wok-Gak [sic] temple and worked as a prayer priest." The petitioner has not submitted any independent, corroborative evidence to support its contention that the beneficiary worked at the temple since December 1996. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). Moreover, the petitioner had never

asserted that the beneficiary worked for it during the qualifying period until after the director's decision of denial. Neither the petitioner, nor counsel, have explained this omission. The petitioner has not established that the beneficiary was continuously engaged in a religious occupation from May 5, 1996 to May 5, 1998. The objection of the director has not been overcome on appeal. Accordingly, the petition may not be approved.

Beyond the decision of the director, the petitioner has failed to establish that it made a valid job offer to the beneficiary as required at 8 C.F.R. 204.5(m)(4). Also, the director has failed to establish that it has the ability to pay the proffered salary as required at 8 C.F.R. 204.5(g)(2). As the appeal will be dismissed on the ground discussed, these issues need not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.